

HOUSE BILL 756

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CF SB 517

By: **Delegates Levi, James, Anderson, Beidle, Bohanan, Dumais, Dwyer, Feldman, Frank, Jameson, Jennings, Kelly, Kramer, Mathias, McComas, McHale, Morhaim, Rice, Riley, Tarrant, Valderrama, Vaughn, and Walker**

Introduced and read first time: February 5, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Gang Prosecution Act of 2010**

3 FOR the purpose of altering the definition of criminal gang to repeal the requirement
4 that an association of a certain number of persons whose members meet certain
5 criteria be ongoing; altering a certain list of factors that persons can have in
6 common to be considered a criminal gang; defining “criminal gang member” for
7 certain purposes; altering the list of underlying crimes for criminal gang
8 activity; altering a certain prohibition concerning participation in criminal gang
9 activity to provide that a person may not actively participate in a criminal gang
10 under certain circumstances; altering a provision of law to require that a certain
11 sentence for a violation of the prohibition against participation in a criminal
12 gang under certain conditions be separate from and consecutive to a sentence
13 for the underlying crime; and generally relating to criminal gangs.

14 BY repealing and reenacting, with amendments,
15 Article – Criminal Law
16 Section 9–801 and 9–804
17 Annotated Code of Maryland
18 (2002 Volume and 2009 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Criminal Law**

22 9–801.

23 (a) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) "Coerce" means to compel or attempt to compel another by threat of harm
2 or other adverse consequences.

3 (c) "Criminal gang" means a group or [ongoing] association of three or more
4 persons whose members:

5 (1) individually or collectively [engage in a pattern of criminal gang
6 activity] **COMMIT, ATTEMPT TO COMMIT, CONSPIRE TO COMMIT, OR SOLICIT TWO
7 OR MORE UNDERLYING CRIMES, OR ACTS BY A JUVENILE THAT WOULD BE AN
8 UNDERLYING CRIME IF COMMITTED BY AN ADULT, PROVIDED THE CRIMES OR
9 ACTS WERE NOT PART OF THE SAME INCIDENT;**

10 (2) have as one of their primary objectives or activities the commission
11 of one or more underlying crimes, including acts by juveniles that would be underlying
12 crimes if committed by adults; and

13 (3) have in common:

14 (I) an identifying sign, symbol, name, leader, or purpose;

15 (II) **AN OVERT OR COVERT ORGANIZATIONAL OR COMMAND
16 STRUCTURE;**

17 (III) **A DE FACTO CLAIM OF TERRITORY OR JURISDICTION;**

18 (IV) **AN INITIATION RITUAL; OR**

19 (V) **A METHOD OF OPERATION OR CRIMINAL ENTERPRISE.**

20 [(d) "Pattern of criminal gang activity" means the commission of, attempted
21 commission of, conspiracy to commit, or solicitation of two or more underlying crimes
22 or acts by a juvenile that would be an underlying crime if committed by an adult,
23 provided the crimes or acts were not part of the same incident.]

24 (D) **"CRIMINAL GANG MEMBER" MEANS A PERSON WHOSE CRIMINAL
25 GANG MEMBERSHIP IS PROVEN BY AT LEAST TWO OF THE FOLLOWING:**

26 (1) **SELF-PROCLAMATION;**

27 (2) **USE OF A CRIMINAL GANG'S IDENTIFYING SIGN, SYMBOL,
28 NAME, OR ANY OTHER MEANS OF RECOGNITION;**

29 (3) **ASSOCIATION WITH KNOWN CRIMINAL GANG MEMBERS AND:**

1 **(I) DEMONSTRATED ASPIRATION TO BECOME A CRIMINAL**
 2 **GANG MEMBER BY ADOPTION OF THE CRIMINAL GANG’S STYLE OF DRESS,**
 3 **TATTOOS, HAND SIGNALS, OR SYMBOLS; OR**

4 **(II) PARTICIPATION IN CRIMINAL GANG ACTIVITIES,**
 5 **INCLUDING ATTENDING CRIMINAL GANG MEETINGS;**

6 **(4) IDENTIFICATION AS A CRIMINAL GANG MEMBER THROUGH**
 7 **ASSESSMENT AND VERIFICATION WHILE IN THE CUSTODY OF THE DEPARTMENT**
 8 **OF PUBLIC SAFETY AND CORRECTIONAL SERVICES; OR**

9 **(5) PHYSICAL EVIDENCE INCLUDING PHOTOGRAPHS OR WRITTEN**
 10 **OR ELECTRONIC CORRESPONDENCE.**

11 (e) “Solicit” has the meaning stated in § 11–301 of this article.

12 (f) “Underlying crime” means:

13 (1) a crime of violence as defined under § 14–101 of this article;

14 (2) **A VIOLATION OF § 3–203 (SECOND DEGREE ASSAULT), § 3–701**
 15 **(EXTORTION), § 4–101 (DANGEROUS WEAPONS), § 4–203 (WEARING, CARRYING,**
 16 **OR TRANSPORTING A HANDGUN), § 6–301 (MALICIOUS DESTRUCTION), § 9–302**
 17 **(INDUCING FALSE TESTIMONY OR AVOIDANCE OF SUBPOENA), § 9–303**
 18 **(RETALIATION FOR TESTIMONY), § 9–305 (INTIMIDATING OR CORRUPTING**
 19 **JUROR), § 11–304 (RECEIVING EARNINGS OF PROSTITUTE), § 11–306 (HOUSE OF**
 20 **PROSTITUTION), OR § 12–102 (GAMBLING) OF THIS ARTICLE;**

21 **[(2)](3) a felony violation of [§ 3–203, § 3–701,] § 4–503**
 22 **(MANUFACTURE OR POSSESSION OF DESTRUCTIVE DEVICE), § 5–602**
 23 **(DISTRIBUTION OF CDS), § 5–603 (MANUFACTURING CDS OR EQUIPMENT), §**
 24 **6–103 (SECOND DEGREE ARSON), § 6–109 (ATTEMPT TO BURN STRUCTURE OR**
 25 **PROPERTY), § 6–202 (FIRST DEGREE BURGLARY), § 6–203 (SECOND DEGREE**
 26 **BURGLARY), § 6–204 (THIRD DEGREE BURGLARY), § 7–104 (THEFT), OR § 7–105[,**
 27 **§ 9–302, § 9–303, or § 9–305](UNAUTHORIZED USE OF A MOTOR VEHICLE) of this**
 28 **article; or**

29 **[(3)](4) a [felony] violation of § 5–133(B) OR (C) of the Public Safety**
 30 **Article.**

31 9–804.

32 (a) A person may not[:

1 (1) **ACTIVELY** participate in a criminal gang [knowing that the
2 members of the gang engage in an ongoing pattern of criminal gang activity; and

3 (2) knowingly] and willfully direct or participate in the commission of
4 an underlying crime, or act by a juvenile that would be an underlying crime if
5 committed by an adult, committed for the benefit of, at the direction of, or in
6 association with a criminal gang.

7 (b) A person may not commit a violation of subsection (a) of this section
8 involving the commission of an underlying crime that results in the death of a victim.

9 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a
10 person who violates this section is guilty of a felony and on conviction is subject to
11 imprisonment not exceeding 10 years or a fine not exceeding \$100,000 or both.

12 (ii) A person who violates subsection (b) of this section is guilty
13 of a felony and on conviction is subject to imprisonment not exceeding 20 years or a
14 fine not exceeding \$100,000 or both.

15 (2) A sentence imposed under this section [may] **SHALL** be separate
16 from and consecutive to [or concurrent with] a sentence for any crime based on the act
17 establishing a violation of this section.

18 (d) A person may be charged with a violation of this section only by
19 indictment, criminal information, or petition alleging a delinquent act.

20 (e) (1) The Attorney General, at the request of the State's Attorney for a
21 county in which a violation or an act establishing a violation of this section occurs,
22 may:

23 (i) aid in the investigation of the violation or act; and

24 (ii) prosecute the violation or act.

25 (2) In exercising authority under paragraph (1) of this subsection, the
26 Attorney General has all the powers and duties of a State's Attorney, including the use
27 of the grand jury in the county, to prosecute the violation.

28 (3) Notwithstanding any other provision of law, in circumstances in
29 which violations of this section are alleged to have been committed in more than one
30 county, the respective State's Attorney of each county, or the Attorney General, may
31 join the causes of action in a single complaint with the consent of each State's Attorney
32 having jurisdiction over an offense sought to be joined.

33 (f) Notwithstanding any other provision of law and provided at least one
34 criminal gang activity of a criminal gang allegedly occurred in the county in which a
35 grand jury is sitting, the grand jury may issue subpoenas, summon witnesses, and

1 otherwise conduct an investigation of the alleged criminal gang's activities and
2 offenses in other counties.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2010.